

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Plaintiff,

v.

Eugene Washington,

Defendant.

**MEMORANDUM OPINION
AND ORDER**

Civil No. 05-337 ADM/AJB

Perry Sekus, Esq., Assistant United States Attorney, Minneapolis, MN, for and on behalf of Plaintiff.

Katherine Menendez, Esq., Assistant Federal Public Defender, Minneapolis, MN, for and on behalf of Defendant.

I. INTRODUCTION

This matter is before the undersigned United States District Judge pursuant to the Objections of Defendant Eugene Washington (“Defendant”) [Docket No. 9] to the Report and Recommendation (“R&R”) of Magistrate Judge Arthur J. Boylan [Docket No. 8]. The R&R found Defendant to be suffering from a mental disease or defect, requiring treatment [Docket No. 8]. The factual background in this matter is set forth in the R&R and is incorporated by reference for purposes of the present Objections. For the reasons set forth below, the Objections are denied, and the R&R is adopted.

II. DISCUSSION

In appeals of nondispositive pretrial matters, the district court must set aside any portion of the magistrate judge’s ruling that is “clearly erroneous or contrary to law.” See D. Minn. LR 72.2(a).

Defendant objects to the recommendation of the R&R that Defendant be hospitalized for

treatment of mental illness. Defendant argues that while he does suffer symptoms resulting from a traumatic brain injury, he is functioning appropriately and does not “want treatment for psychiatric symptoms”. Defendant supports these claims by citing his ability to feed, clothe and clean himself, while living in an open unit of the mental health facility at FMC Rochester. Defendant does not dispute the factual record upon which the R&R relies, and furthermore, Defendant does not contest the suitability of the FMC Rochester facility. Finally, Defendant does not cite any legal argument opposing the R&R.

According to 18 U.S.C. § 4245, if a federal prisoner objects to being committed to a mental hospital, the court must conduct a hearing to determine the existence of “reasonable cause to believe that the person may presently be suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility.” 18 U.S.C. § 4245(a); United States v. Jones, 811 F.2d 444, 447 (8th Cir. 1987). Judge Boylan conducted a mental health hearing at FMC Rochester on April 13, 2005.

The R&R relies on the testimony of Dr. Shine, who was found to be a credible expert in the field of psychiatry, and whose qualifications were stipulated to by the parties. R&R at 3. Dr. Shine testified that Defendant suffers from Psychotic Disorder, Not Otherwise Specified, which causes hallucinations and delusions, as well as bizarre and self-destructive behavior. R&R at 4. These bizarre and self-destructive behaviors include, but are not limited to, “feeling the walls of the cell,” “standing over top of his cell mate while he slept,” and repeatedly making himself fall, causing the back of his head to hit the ground, breaking his teeth. Id.

The R&R correctly found Defendant to be presently suffering from a mental disease or defect

based on Dr. Shine's testimony. Dr. Shine further testified that Defendant is in need of treatment, and without treatment, Defendant may deteriorate. Therefore, pursuant to 18 U.S.C. § 4245, the Court shall commit Defendant to the custody of the Attorney General "for treatment in a suitable facility until he is no longer in need of such custody for care or treatment or until the expiration of the sentence of imprisonment, whichever occurs earlier." 18 U.S.C. § 4245(d). Finding no evidence of any findings which are "clearly erroneous or contrary to law," the R&R is adopted. See D. Minn. LR 72.2(a).

III. CONCLUSION

Based upon the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Judge Boylan's R&R [Docket No. 8] is **ADOPTED**; and
2. Defendant's Objections [Docket No. 9] are **DENIED**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT JUDGE

Dated: June 10, 2005.